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Supreme Court of the United States

October 1957 Term

No. 96 Misc.

WILLIAM A. WETZEL,

Petitioner,

against

WILLIAM HARPOLE, Superintendent, Mississippi State Penitentiary, Parchman, Sunflower County, Mississippi, and E. W. WILLIAMS, Sheriff, Indianola, Sunflower County, Mississippi,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR REHEARING

Preliminary Statement

The within petition for rehearing addresses itself to two substantial grounds not previously presented on behalf of petitioner.

All "Appendix" references are to the appendices contained in the Petition for Writ of Certiorari originally filed herein.

I

The Mississippi Legislature in enacting the "Lethal Gas Chamber Act" has vitiated the judgment of execution thus making it impossible for petitioner to be lawfully executed.

A history of the within case from judgment to the time that the Mississippi Legislature enacted the so-called "Lethal Gas Chamber Act" reveals that the judgment of execution cannot be lawfully carried out.

The judgment of the September, 1953, Term of the Circuit Court of Sunflower County, Mississippi, rendered after trial and verdict, provided, insofar as pertinent here, as follows:

> "* * * it is, therefore, considered and ordered by the Court that for such crime of MURDER the Defendant, William A. Wetzel, be taken by the Sheriff of Sunflower County, Mississippi, and confined in the County Jail of said County until October 30, 1953, when he shall be taken by the official operator of the State electric chair of the State of Mississippi and placed in said electric chair and there suffer death by electrocution."

Thereafter, the Mississippi Legislature changed the manner of execution in capital cases from electrocution to lethal gas [*Appendix E, § 2550*]. The Legislature further granted a right of election, or option, to the condemned man in the event his conviction pre-dated the enactment [*Appendix E, § 2557*]. He then could choose execution by lethal gas or electrocution.

Firsthand it seems odd to find a right of election as to the manner of execution where the new statute [*§ 2550*] is mandatory in stating that there *shall* be only one manner of inflicting the death penalty and that is lethal gas.

An examination of the new § 2550 discloses that it is not a discretionary statute, it states "The manner of inflicting the punishment of death *shall* be by lethal gas, * * *." Thus in the State of Mississippi there can be no other lawful type of execution other than lethal gas from the date of enactment of new § 2550. The fact that a right of election is found in another amended statute in no way alters this conclusion [*Appendix E, § 2557*]. § 2550 is explicit and clear, the punishment of death shall be by lethal gas.

If these new statutes are held to be applicable to the instant case then the effect is to change the judgment of

execution rendered by the trial court. This presents a novel question as to the right of the Legislature to vary, alter or modify the order of the Judiciary.

The question as to whether or not petitioner can now be executed by electrocution became academic when Mississippi enacted the new § 2550 using the mandatory words "death *shall* be by lethal gas". Obviously, since this new enactment no other type of execution is permissible in the State.

II

The right to choose between execution by lethal gas or electrocution as set forth in § 2557 in effect provides for "suicide".

Suicide is the intentional taking of one's own life. Many jurisdictions have enacted laws against attempted suicide and abetting and advising suicide [*New York, Penal Law, § 2304, § 2305*]. The State of Mississippi punishes the aiding and abetting of suicide as a felony [*Miss. Code, 1942, § 2375, Anno., Vol. IIA, Recompiled*]. The decision to take one's own life is not in fact suicide, however, the choosing of the manner of death and the ultimate death constitute suicide.

It is shocking to find that a provision of the Mississippi law provides for "suicide". § 2557 of the Mississippi Code, as amended, provides:

> "• • • Provided, however, in all cases where sentence of death has been imposed prior to the passage of this act, the one so sentenced shall have the choice of receiving the death penalty under this act or as provided by law prior to the date of the passage of this act; provided, such lethal gas chamber has been constructed prior to the execution date, and provided, such choice is expressed to the sheriff of the county where the sentence was imposed at least five (5) days before the date of execution, and in

case such option is not so exercised within such time, then the condemned will be put to death under the provisions of the state law which was in effect prior to the passage of this act." [*Appendix E, § 2557*]

This statute gives petitioner an option to choose the manner in which he will be put to death. He thus becomes his own motivating force in death. His death is then a suicide. Even if petitioner fails to exercise the option and choose lethal gas, such failure to elect means his selection is electrocution.

A suicide provision of law is repugnant to our society, morals as well as the United States Constitution and is against public policy. It is cruel and unusual punishment to require a man in our humane society to select the manner in which he will die.

The petitioner herein by being forced either to choose, or not to choose, the manner in which he will die is actually participating in the intentional taking of his own life.

Respectfully submitted,

CURTIS F. MCCLANE,
HOWARD A. MCDONNELL,
Attorneys for Petitioner.

Certificate of Counsel

CURTIS F. MCCLANE, one of counsel for petitioner, hereby certifies that the above application is made in good faith and not for the purpose of delay. Counsel further certifies that the within petition is restricted to the grounds set forth in Rule 58 of the Supreme Court of the United States.

CURTIS F. MCCLANE

Dated: New York, New York
November 19, 1957